



STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL
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MITIGATION REGULATION ADOPTION HEARING MINUTES

Date: Thursday, October 3rd, 2019
Time: 1:00 p.m.
Place: Nevada Department of Wildlife
6980 Sierra Center Parkway #120, Reno, NV 89511

A full audio recording of this meeting is accessible through the following website
http://sagebrusheco.nv.gov/Meetings/Sagebrush_Ecosystem_Council_Meeting/

Council Member Present: JJ Goicoechea, Chris MacKenzie, Allen Biaggi, Steven Boies, Bevan Lister, Sherm Swanson, Starla Lacey, William Molini, Cheva Gabor for Bill Dunkelberger, Justin Barrett, Jon Raby, Karri Honaker for Ray Dotson, Jim Lawrence for Bradley Crowell, Jennifer Ott, Tony Wasley.

Council Members Absent: Gerry Emm.

1. OPEN HEARING, INTRODUCTION

Chairman Goicoechea opened the hearing at 1:09 PM.

2. PUBLIC COMMENT

Ms. Debbie Struhsacker commented that many constituents qualify as small businesses pursuant to NRS 233B. Ms. Struhsacker appreciated the exemptions that attempt to minimize impacts to small businesses, but believed that there is an inadvertent mistake in the small business analysis in that many companies will not be exempt from the regulations that are currently classified as small businesses. Ms. Struhsacker believed that the regulations did not fulfill the requirement to minimize impacts on small businesses. Ms. Struhsacker asked that all exploration be exempted due to the majority of exploration being done by small businesses and are short lived, fully reclaimed, and the impacts can almost always be minimized or avoided. Ms. Struhsacker also commented that there is limited acreage involved in exploration activities.

Ms. Laura Granier, representing Fiore Gold, commented that she appreciated the effort the council has put into this process. Ms. Granier asked that the recognition that the regulations do not, and cannot be applied to locatable minerals. It would be unlawful and in conflict with the federal mining law, and would implicate takings under the constitution and the 5th amendment, and could not be a basis for withholding a federal permit. Ms. Granier referred to the Gold Rock project and indicated that the SETT was a cooperating partner to the development of that EIS, including Mr. McGowan and NDOW with others. The Gold Rock project was re-reviewed in light of the 2015 LUPA. The BLM was clear through statement in the NEPA process that compensatory mitigation did not apply to locatable minerals. No one raised comments or concerns about those statements in the comment periods. Gold Rock made it clear that it would do voluntary mitigation which the CCS was a consideration in. Additional requirements of compensatory mitigation being a requirement for other permits for a project which had a ROD signed prior to the executive order is inequitable

and unlawful. Ms. Granier commented that she agrees with the comments of Ms. Struhsacker. Ms. Granier commented that Fiore Gold and other companies satisfy the definition of a small business and should not be subject to these regulations if locatable minerals are involved. Establishing different methods of compliance for small businesses should be a consideration in the regulations. Ms. Granier asked that “carve-outs” be created for the federal mining law, locatable minerals, consider impacts to small businesses that are not addressed with the current exemptions, and consider the history, collaboration, and good faith of the Gold Rock project.

Mr. Tom Williams, representing Fiore Gold, commented that he appreciated the efforts of the council. Mr. Williams commented that Fiore Gold is a small business, and the requirements for credits which have an unknown price could be devastating to small businesses. Small mining companies do not have resources to buy land to satisfy mitigation requirements. Mr. Williams reiterated the importance of establishing credits on public land. Mr. Williams asked if anticipated credits are in line with anticipated debits. Mr. Williams asked that the council fully consider written comments that have been submitted.

Mr. Jesse Wadhams, representing the Nevada Rural Electric Association. Mr. Wadhams asked for further clarity around Section 16.2.e.1 regarding health and safety activities. Mr. Wadhams asked that the provision of power in remote areas would be classified as health and safety.

Mr. Jeremy Drew, representing the Nevada Association of Counties appreciated and supports the changes to Section 10.2, Section 16.1.a-b, and Section 16.2.e.2. Mr. Drew communicated that Sections 3 and 5 define anthropogenic disturbances as defined by the SEC. For consistencies and certainties sake NACO would like for those disturbances to be defined by the State Plan. Section 12 broadly defines public land in a way that applies to local governments which seems inconsistent to the regulations that are triggered by state and federal authorizations. Mr. Drew asked whether the council was comfortable with a broad definition of the state plan. Section 16.1.a should have a geographic limit such that only projects located within habitat defined by the GRS habitat management areas would require mitigation to avoid county infrastructure being included into the regulations. Mr. Goicoechea asked for clarification regarding Section 16.1.a that the desired language was “public lands within GRS habitat management areas.” Mr. Drew replied in the affirmative. Mr. John Cleary, representing Western Exploration, commented on the potential cost of compensatory mitigation, which might be double the cost of reclamation bonding. This would be too onerous. Mr. Cleary commented that it seemed unreasonable to continue to classify areas that are PHMA as PHMA if an area has burned and habitat is lost.

Ms. Laura Granier, representing Western Exploration, commented that the impacts on Nevada small businesses like western exploration have not been fully considered. Ms. Granier supplied the suggestion that federal lands projects could be an avenue to provide options to small businesses. Ms. Granier also commented that there would be an issue in applying these regulations to locatable minerals and there may be conflict with the 1872 mining law, and that there does not seem to be state authority to withhold permits as a penalty for non-compliance.

3. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION

Mr. McGowan and Ms. Petter presented information on the history, process, and summary of the proposed regulation. This presentation and summary can be found under agenda item 10 of this meeting entry on the program website. Chairman Goicoechea asked how to address the concerns expressed about Section 233B relating to the small business impact statement. Mr. Bryan Stockton indicated that the process to assess impacts to small businesses was completed, impacts were found, and an alternative for specific circumstances was created. Implications that regulations cannot be passed impacting small businesses are incorrect.

4. CONSIDERATION OF ALL COMMENTS AND ADOPTION OF REGULATION - *For Possible Action*

A version of the regulation was presented with changes proposed that address public comments submitted to the SETT. Member Lister asked about the suggestion to use the state plan to define anthropogenic disturbances instead of the suggested changed language naming the SEC. Mr. Stockton replied that the opinion of the Legislative Council Bureau (LCB) was that the state plan is not a regulatory document, and that it is an extension of the council. There would be no difference between the council and the state plan. Chairman Goicoechea asked about a future council going against the state plan. Mr. Stockton replied that course of action would negate the state plan and it would no longer be a guide. Suggested wording change was accepted.

The Council engaged in a back and forth discussion on proposed language addressing public comments. All wording changes were accepted with the following exceptions and additions. Section 16.1b was removed due to concerns with the authority of the state to hold up permits. A discussion was held regarding the authority a mitigation process might have over other permits. Member Biaggi moved to remove Section 16.1b. Member Lister seconded the motion. Member Boies asked how that affected compliance. Mr. Lawrence responded that this section is not needed for the purposes of federal agencies complying with regulations, but expressed uncertainty with potential violations. Member Boies asked if mining industries intended to use the CCS. Mr. Cleary, representing Western Exploration, indicated that it might depend on what mitigation costs, which is currently uncertain. Member Boies expressed concern that due to mining laws, some companies might take the position of non-participation. Ms. Granier commented that voluntary mitigation still occurs, and mining typically goes above and beyond legal requirements. Ms. Struhsacker commented that companies have to follow the avoid, minimize, and mitigate process and that the mining industry wants to avoid listing in the future. The concern remains the unknown cost of this program. The vote to remove Section 16.b passed by a 4:3 vote, Members Lister, Biaggi, Lacey, and Goicoechea voting to remove, Members Boies, Molini, and Swanson to remain.

A discussion ensued relating to Section 16.2.e. Member Lacey made a motion to add utilities in the language excepting activities for routine administrative functions that serve a public purpose. All other proposed language changes to the sections were approved. Motion passed.

Member Lister moved to include local government in the exceptions to the definition of public land in Section 12. Member Lacey seconded the motion. Motion passed, Members Molini and Swanson opposed the motion.

Member Biaggi commented that the council should be aware of the breadth of the comments provided in the packet materials.

Mr. Barrett commented and commended the action the council is taking.

Member Swanson moved to adopt the regulation as amended. Motion was seconded by Member Biaggi. Motion passed.

5. PUBLIC COMMENT

No public comment.

6. ADJOURNMENT

Hearing was adjourned at 4:27 PM.